

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 14, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: Paul Schultz

SECRETARY TO THE BOARD: Peggy Pelikan

OTHERS PRESENT: Town of Merton Board of Adjustment
Jake Schlafer, BA06:034, owner
Mark Brewer, BA06:038, owner
Tom & Judy Sheridan, BA06:039, owners
George & Ann Chromy, BA06:035, owners
Billy Butz, BA06:037 and BA06:038, petitioner
Jim Bedore, BA06:037, owner
Dennis Dederich, BA06:036, engineer for petitioner
Rob Quadracci, BA06:036, owner
John Sesolak, BA06:036, neighbor
Kip Foerester, BA06:039, neighbor
Greg Maniachi, BA06:036, builder

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of May 10, 2006.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

NEW BUSINESS:

BA06:034 JAKE & JODY SCHLAFER

Mr. Bartholomew *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage must be located at least 8.75 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage and

retaining wall, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
5. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
6. Any proposed retaining walls must be a minimum of 5 ft. from the property lines.
7. The existing shed must be removed from the property prior to the expiration date of the Zoning Permit for the proposed garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners are proposing to remove the existing garage and replace it with a new slightly larger detached garage. The proposed garage will be in approximately the same location as the existing garage behind the house from the road. The garage will meet all of the locational requirements of the Ordinance. As conditioned, the approval of this request will eliminate the non-conforming shed from the property and allow the petitioners to construct a new detached garage on their property. It should be noted that with the construction of the new garage, the property would still conform to the total floor area ratio and open space requirements of the Ordinance. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:035 GEORGE CHROMY

Mr. Tarmann

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report with the removal of Condition No. 6.

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage must be located at least 5 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the

height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.

4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 2.
6. The existing shed must be removed from the property prior to the expiration date of the Zoning Permit for the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners are proposing to remove the existing garage and replace it with a new larger detached garage. The proposed garage will be in approximately the same location as the existing garage other than the fact that it will be, as conditioned, 5 ft. from the north property, whereas the existing detached garage is over the lot line. The garage will meet all other locational requirements of the Ordinance. As conditioned, the approval of this request will eliminate the non-conforming shed from the property and allow the petitioners to construct a new detached garage on their property. It should be noted that, with the construction of the new garage, the property would still conform to the total floor area ratio and open space requirements of the Ordinance. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:037 McBED LLC C/O JAMES BEDORE

William Butz – Petitioner

Mr. Schmidt

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried four yes votes, Mr. Ward abstained from voting.

The staff's recommendation was for approval, with the following conditions:

1. A detailed cost estimate for the proposed remodeling must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will allow the petitioners to do interior remodeling to the interior of the existing residence. The residence is a substantial structure, which has been extensively remodeled in the past. In addition, the petitioner is not proposing any exterior expansion of the structure; therefore, there is no further encroachment into the offset, shore or floodplain setback area. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:038 MARK BREWER
William Butz – Petitioner

Mr. Schmidt *I make a motion to continue the discussion regarding this matter to the end of the agenda.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Mr. Dwyer *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the following modifications to the recommended conditions and reasons:*

Condition No. 1 shall read as follows, "The proposed addition must be located at least 15 ft. from the road right-of-way and the deck must be located at least 13 ft. from the road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the road setback requirements."

Condition No. 3 shall be eliminated.

The reasons for the decision shall be modified to read as follows:

"As conditioned, the approval of this request will allow the construction of a two-story addition to the existing residence on the property. The addition will maintain a 15 ft. setback from the road right-of-way and the decking will maintain a 13 ft. setback from the road right-of-way. The existing structure is substantial and there is no location on the property where a residence could be constructed in a more conforming location. Therefore, it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance."

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Ward abstained from voting.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition and decking must be located at least 20 ft. from the road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the road setback requirements.
2. The addition and decking must conform to the floor area ratio requirements of the Ordinance.
3. The garage doors shall face Silver Lake Dr. and not the north lot line as proposed.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition and decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a

zoning permit.

7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 4.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will allow the construction of a two-story addition to the existing residence on the property. The addition and decking will maintain a minimum of a 20 ft. setback from the road right-of-way, which will be approximately in line with the existing residence. The garage doors will face Silver Lake Dr. instead of facing the north lot line. The construction of a garage with a side entry on this property will most likely require a large driveway expansion, which will significantly increase the amount of impervious surface on the property that may cause future drainage problems. If the entrance to the garage is on the roadside, the driveway may not have to be expanded at all and the large existing maple tree on the northwest corner of the property may not have to be removed. The existing structure is substantial and there is no location on the property where a residence could be constructed in a more conforming location. Therefore, it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:039 THOMAS SHERIDAN

Mr. Tarmann

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage must be located at least 5 ft. from the lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. The detached garage shall not exceed 432 sq. ft. in size as proposed.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
5. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.

6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 2.
7. The existing shed must be removed from the property prior to the expiration date of the Zoning Permit for the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will eliminate the non-conforming shed from the property and allow the petitioners to construct a new detached garage on their property. The proposed garage will be 5 ft. from both the south and west property lines, whereas the existing shed is on the property lines. It should be noted that if the petitioners were required to move the garage further from the lot lines, it would be very difficult to maneuver a vehicle around the residence and into the new garage. It should further be noted that the petitioners would not be able to construct any size building on their property without the need for the open space requirement of the Ordinance. Although the property will exceed the accessory building floor area ratio and total floor area ratio requirement of the Ordinance, a 432 sq. ft. size garage is a reasonably sized garage for a property of this size. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:036 ROBERT QUADRACCI

Mr. Dwyer

I make a motion to hold this hearing in abeyance until the June 28, 2006, Board of Adjustment Meeting to enable the petitioner to gather further information with the understanding that the information will be provided to the Planning and Zoning Division Staff by June 23, 2006, for review.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of the request for variances from the offset, floor area ratio, and building height requirements and denial of the special exception from the accessory building floor area ratio, but approval of the request for variances from the shore and floodplain setback and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance for the additions to the residence, and approval of the request for variances from the road setback to allow the construction of a detached garage, with the following conditions:

1. Lots 1, Florencetta Heights and the adjacent property, owned by the petitioner, must be combined by a Certified Survey Map. The Certified Survey Map will need to be approved by the Town of Merton and the Waukesha County Planning and Zoning Division Staff, and recorded in the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit.
2. The detached garage must be a minimum of 20 ft. from the road right-of-way and must conform with the offset requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.

4. The proposed garage must be at least 20 ft. from the top of bank, to limit the amount of disturbance to the sensitive, heavily vegetated steep slope. No vegetation shall be removed from the property without a cutting plan being approved from the Planning and Zoning Division and, if applicable, a Shoreland Cutting Zoning Permit being issued.
5. The proposed additions to the residence shall be no closer to the shore or floodplain than the existing residence.
6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition, decking, and garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 4. It should be noted that a vegetative buffer may be required between an impervious surfaces and the steep slopes on the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

With the two lots combined by Certified Survey Map, the petitioners would be able to construct an approximately 1,500 sq. ft. detached garage without the need for a special exception from the accessory building floor area ratio requirements of the Ordinance. Furthermore, if the lots are combined, as recommended, the proposal no longer requires variances from the floor area ratio and offset requirements of the Ordinance. When the location of the proposed garage is moved away from the steep slope, as conditioned, there will be no need for the building to exceed the height requirements of the Ordinance. It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. As conditioned, a detached garage may be constructed as close as 20 ft. from the road right-of-way; this will allow a garage to be constructed on the widest and flattest portion of the property and near the existing detached garage on the adjacent property. To allow the detached garage to be constructed on the steep slope of the property will be extremely detrimental shoreline. The area will be very difficult to stabilize during and after construction and an extensive amount of vegetation will have to be removed. Furthermore, the large increase in the amount of impervious surface from the building and the driveway may cause erosion problems on the steep slope. Moving the detached garage and other impervious surfaces away from the slope may help to prevent erosion problems.

The existing residence is a substantial structure and due to the steep, heavily vegetated slopes it would be very detrimental to the property to require the existing residence to be removed and reconstructed in a more conforming location. Therefore, it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance. Although the existing residence does not meet the shore and floodplain setback requirements, the residence is located approximately 35 above the shoreline. The proposed additions will be no closer to the shore and the floodplain than the existing residence. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:016 BARRY & PHYLLIS STONE REV TRUST

Joe Terlizzi - Petitioner

Mr. Ward *I make a motion to reconsider the previous decision made by the Board.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Dwyer abstained from voting.

Mr. Ward *I make a motion to amend the Board's previous decision to allow the porch to remain subject to the following conditions:*

- 1. The nonconforming shed that lies immediately east of the residence and entirely within the required offset area must be removed from the property within 60 days of the date of this decision.*
- 2. The remodeled and expanded porch may be allowed to remain.*
- 3. The County must issue Zoning Permit and a building permit must be obtained from the Town prior to the commencement of the work.*
- 4. The matter shall be forwarded to the Waukesha County Corporation Counsel so that appropriate legal action can be taken for the construction that took place without the required permits.*

The reasons for the decision are as follows:

The approval of this request will result in a nonconforming structure within the setback are being completely removed from the property. And it allows the petitioner to retain a very slight addition to the home that doesn't have any significant impact improvements remaining on the parcel or the longevity of the structure. And has a lesser degree of nonconformity than the shed that will be removed.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:40 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy Pelikan
Secretary, Board of Adjustment